IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

RSA No. 133 of 2007.
With
COPC No. 79 of 2009.

Date of Decision: 16.4.2012.

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1. RSA. No. 133 of 2007.

1. Sh. Parkash Chand son of Pohlo Ram

2. Smt. Tripta Devi wife of Sh. Parkash Chand
Both residents of village Jowar, Tehsil Amb,
District Uan, H.P.

...Petitioners.

Versus.

Prem Dass son of Sh. Radhu Ram, resident of village Jowar,
Tehsil Amb, District Una, H.P.

...Respondent.

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2. **COPC.No. 79 of 2009.**

1. Sh. Parkash Chand son of Pohlo Ram

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Both residents of village Jowar, Tehsil Amb,
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Tehsil Amb, District Una, H.P.

...Respondent.

Coram:

Hon'ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting1?.

For the petitioner: Mr.K.D.Sood, Sr. Advocate with
Mr. Mukul Sood, Advocate.

For Respondent: Mr.Sanjeev Kuthiala, Advocate.

Whether reporters of the Local papers are allowed to see the judgment.yes.

Dev Darshan Sud,J (Oral).

This second appeal has been admitted on the following substantial questions of law by this Court on 16th April, 2007.

> *"1. Whether the findings of the court below are perverse, based upon misreading of oral and documentary evidence as also pleadings of the parties and the grant of relief of injunction when the defendant was admittedly in possession of the property, are sustainable in law.*
>
> *2. Whether the court below was justified in allowing the application for additional evidence when application under Order 18 Rule 17-A C.P.C. was dismissed by the trial Court and which decision was upheld by the Hon'ble High Court and considering such additional evidence without affording any opportunity to the appellant to rebut the same.*
>
> *3. Whether the findings recorded by the trial Court based upon appreciation of evidence could be reversed by the District Judge on the assumptions raised which were not warranted on the material on record and in complete disregard to the revenue record to which presumption of truth is attached."*

2. These questions on a detailed examination of the evidence would not arise for determination of the Court because as pointed out by the plaintiff, the defendant himself admits no title on a suit land or any claim thereon. In this eventuality, it would only be an academic exercise which this Court will not undertake.

3. The plaintiff instituted the suit out of which the present appeal arises pleading that he is in possession with respect to the suit land comprised in khasra No. 574, however, in the body of the plaint khasra number mentioned is 573 in para-1 of the plaint. In any event, ignoring this on the assumption that it is a typographical mistake, the

plaint proceeds that land measuring 0-03-41 hectares marked by letters 'A.H.I.J.F.G.' is coming in the possession of the plaintiff for long period of time. He claims a possessory right as user of the land; he had installed a 'Atta Chakki' (flour mill), Kohlu (oil mill) and cotton ginning machine in this 'Abadi' land exclusively for his use, which mills etc. he had closed because of illness. The plaint then proceeds that:

> *2.That the defendant has no right, title and interests whatsoever in the suit land.*
>
> *3. That the defendant No.1 has his land situated towards western side of the suit land. The defendant No.1 has filed a fictitious and false suit against the plaintiff with regard to his adjoining land comprised in khasra No. 566 and obtained an exparte temporary injunction in that suit with the malafide purpose to take the forcible possession of the suit land under the garb of temporary injunction order granted in that earlier suit.*
>
> *4. That the defendants according to his preplanned programme since yesterday are threatening to take the forcible possession of the suit land and raising construction over the land in suit by ousting the plaintiff there from.*
>
> *5. That the defendants are requested many times to restrain themselves from their above noted illegal act and malafide design but he is adamant and has finally refused to accede to the wishes of the plaintiff today when the defendants started throwing waste wood and Bura etc. of his saw mill in the suit land, which has constrained to the plaintiff to file the present suit with the bonafide purpose to protect the possession on the suit land."*
>
> The written statement reads:
>
> *2. It is correct that the defendant has no right, title or interest with the suit land, but at the same time plaintiff has no right title or interest with the suit land.*

3. In reply to this para it is submitted that the defendant was compelled to file suit against the plaintiff regarding khasra No. 566 as the plaintiff was threatening to interfere in the suit land. It is further submitted that the defendants has fully explained the true position of suit land which is shown in red colour in the site plan and the property of defendant which is situated towards the western side of suit land is shown in blue colour site plan is attached herewith.

4. It is wrong and denied. The plaintiff never threatened to raise construction over the land of State Govt. which is suit land. Since the plaintiff is not in possession of the suit land, there is no question of any threat to the plaintiff by the defendant.

5. It is wrong and denied. The defendant never thrown any waste wood etc. over the suit land. The plaintiff has no locus standi to file the present suit."

4. A plain reading on this averment shows that the suit should and ought to have been dismissed on the first date itself for the reason that the defendant himself stated: (a) that the land was that of the Government; (b) that the defendant has no right, title or interest in this land (c) that no incursion or encroachment was either made or nor intended to be made by the defendant. However, the parties thereafter persisted in fighting each other as cantankerous litigants. The learned trial Court rightly holds:

"The plaintiff has himself admitted in his examination-in-chief when he appeared as PW2 that defendants have no concern with the suit land. Moreover, PW4 has also stated that defendants have no concern with the suit land nor defendants in front of him did any act upon the suit land. Therefore, the story concocted by the plaintiff that defendants used to throw waste of saw machine which has been installed in khasra No. 566 by the defendant in his kitchen garden i.e. suit land could not be

proved by the plaintiff himself. The defendant while appearing as DW1 has stated in his cross-examination that he has no concern with the suit land nor he will interfere in future on the suit land. Therefore, the plaintiff has miserably failed to establish on the face of record whether defendant gave threatening to raise construction or take forcible possession of the suit land."

5. These are the findings of fact. The only question which remained to be determined was as to whether the State was in possession of the land or not. The learned District Judge, on reading of the evidence holds that it is the plaintiff who was in possession of the land. I am not going into that aspect of the case for the reason that even if it is the plaintiff who is in possession, then in that event, the statement of the defendant was itself sufficient to hold that neither he was the owner nor in possession nor had any right, title or interest on the land. The matter should have ended there.

6. In these circumstances, I do not find that any question of law much less of substantial questions of law requiring determination in this appeal which are disposed of accordingly. On the aspect of the ownership of the land of the State, it would be for the State itself to determine as to whether it is the owner in possession of the suit land. Appeal is dismissed.

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7. In view of the dismissal of the appeal, this petition is also dismissed.

(Dev Darshan Sud),
Judge.

April 16,2012(R).